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(c) Requirements for Confidentiality Claims.—

(1) ASSERTION OF CLAIMS.—

(A) IN GENERAL.—A person seeking to protect any information submitted under this Act from disclosure (including information described in paragraph (2)(b)) shall assert to the Administrator a claim for protection concurrent with submission of the information, in accordance with such rules regarding a claim for protection from disclosure as the Administrator has promulgated or may promulgate pursuant to this title.

(B) INCLUSION.—An assertion of a claim under subparagraph (A) shall include a statement that the person has—

(i) taken reasonable measures to protect the confidentiality of the information;

(ii) determined that the information is not required to be disclosed or otherwise made available to the public under any other Federal law;

(iii) a reasonable basis to conclude that disclosure of the information is likely to cause substantial harm to the competitive position of the person; and

(iv) a reasonable basis to believe that the information is not readily discoverable through reverse engineering.

(C) ADDITIONAL REQUIREMENTS FOR CLAIMS REGARDING SPECIFIC CHEMICAL IDENTITY INFORMATION.—In the case of a

claim under subparagraph (A) for protection against disclosure of a specific chemical identity, the claim shall include a structurally descriptive generic name for the chemical substance that the Administrator may disclose to the public, subject to the condition that the generic name shall—

(i) be consistent with guidance issued by the Administrator under paragraph (3)(A); and

(ii) describe the chemical structure of the substance as specifically as practicable while protecting those features of the chemical structure—

(I) that are considered to be confidential; and

(II) the disclosure of which would be likely to cause substantial harm to the competitive position of the person.

(2) INFORMATION GENERALLY NOT SUBJECT TO SUBSTANTIATION REQUIREMENTS.—The following information shall not be subject to substantiation requirements under paragraph (3):

(i) Specific information describing the processes used in manufacture or processing of a chemical substance, mixture, or article.

(ii) Marketing and sales information.

(iii) Information identifying a supplier or customer.

(iv) Details of the full composition of a mixture and the respective percentages of constituents.

(v) Specific information regarding the use, function, or application of a chemical substance or mixture in a process, mixture, or product.

(vi) Specific production or import volumes of the manufacturer.

~~Specific aggregated volumes across manufacturers, if the Administrator determines that disclosure of the specific aggregated volumes would reveal confidential information.~~

(vii) The specific identity of a chemical substance prior to the date on which the chemical substance is first offered for commercial distribution, including the chemical name, molecular formula,

Commented [A1]: Senate believes this language is not simply redundant

Commented [A2]: Edited and simplified to address House concerns

Commented [A3]: Specific aggregated volumes is information that EPA makes available, not individual companies. The intent is for EPA to determine whether it can provide a specific aggregated volume, given CBI claims asserted by the various manufacturers of a given chemical, and not do so if doing so would reveal a company's CBI. The intent and outcome we want is already accomplished by (b)(2)(B).

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Chemical Abstracts Service number, and other information that would identify a specific chemical substance, if the specific identity was claimed as confidential information at the time it was submitted in a notice under section 5.

(3) ADDITIONAL REQUIREMENTS FOR

CONFIDENTIALITY CLAIMS.—Except for information described in paragraph (2) ~~subsection (b)~~, a person asserting a claim to protect information from disclosure under this Act shall substantiate the claim, in accordance with the rules promulgated and consistent with the guidance issued by the Administrator.

Commented [A4]: Changes not accepted, nothing in subsection (b) requires substantiation

(4) GUIDANCE.—The Administrator shall develop guidance regarding—

(A) the determination of structurally descriptive generic names, in the case of claims for the protection against disclosure of specific chemical identity; and

(B) the content and form of the statements of need and agreements required under paragraphs (4), (5), and (6) of subsection (d).

(5) CERTIFICATION.—An authorized official of a person described in paragraph (1)(A) shall certify that the statement required to assert a claim submitted pursuant to paragraph (1)(B) and any information required to substantiate a claim submitted pursuant to paragraph (3) are true and correct.

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(d) Exceptions to Protection from Disclosure.—~~Information.~~
~~Information described in subsection (a) —~~

(1) ~~shall be disclosed if the information is to shall be disclosed to an any officer or employee of the United States—~~

(A) ~~in connection with the official duties of that person—~~

(i) ~~such officer or employee under any law for the protection of human health or the environment, or~~

(ii) ~~for a specific law enforcement purposes;~~

(2) shall be disclosed to a contractor of the United States and employees of that contractor—

(A) ~~if, in the opinion of the Administrator, the such disclosure is necessary for the satisfactory performance by the contractor of a contract with the United States entered into on or after the date of enactment of this Act for the performance of work in connection with this Act; and~~

(B) subject to under such conditions as the Administrator may specify;

(3) shall be disclosed if the Administrator determines ~~that disclosure it is necessary to protect health or the environment against an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible population identified as relevant by the Administrator under the conditions of use.~~

(4) shall be disclosed to a State, political subdivision of a State, or tribal government, on written request, for the purpose of development, administration, or enforcement of a law, if such entity has 1 or more applicable agreements with the Administrator that are consistent with the guidance issued under subsection (c)(4)(B) and ensure that the recipient will take appropriate measures, and has adequate authority, to maintain the confidentiality of the information in accordance with procedures comparable to the procedures used by the Administrator to safeguard the information;

(5) shall be disclosed if a health or environmental professional employed by a Federal or State agency or a treating physician or nurse

Commented [A5]: Changes suggested here were not from either the House or Senate bill so they were not accepted

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in a nonemergency situation provides a written statement of need and agrees to sign a written confidentiality agreement with the Administrator, subject to the conditions that—

(A) the statement of need and confidentiality agreement are consistent with the guidance issued under subsection (c)(4)(B);

(B) the written statement of need shall be a statement that the person has a reasonable basis to suspect that—

(i) the information is necessary for, or will assist in

(I) the diagnosis or treatment of 1 or more individuals; or

(II) responding to an environmental release or exposure; and

(ii) 1 or more individuals being diagnosed or treated have been exposed to the chemical substance concerned, or an environmental release or exposure has occurred; and

(C) the person will not use the information for any purpose other than the health or environmental needs asserted in the statement of need, except as otherwise may be authorized by the terms of the agreement or by the person submitting the information to the Administrator, except that nothing in this Act prohibits the disclosure of any such information through discovery, subpoena, other court order, or any other judicial process otherwise allowed under applicable Federal or State law;

(6) shall be disclosed if in the event of an emergency, a treating physician, nurse, agent of a poison control center, public health or environmental official of a State or political subdivision of a State, or first responder (including any individual duly authorized by a Federal agency, State, or political subdivision of a State who is trained in urgent medical care or other emergency procedures, including a police officer, firefighter, or emergency medical technician) requests the information, subject to the conditions that—

(A) the treating physician, nurse, agent, public health or environmental official of a State or a political subdivision of a State, or first responder shall have a reasonable basis to suspect that—

(i) a medical or public health or environmental emergency exists;

(ii) the information is necessary for, or will assist in, emergency or first-aid diagnosis or treatment; or

(iii) 1 or more individuals being diagnosed or treated have likely been exposed to the chemical substance concerned, or a serious environmental release of or exposure to the chemical substance concerned has occurred;

(B) if requested by the person submitting the information to the Administrator, the treating physician, nurse, agent, public health or environmental official of a State or a political subdivision of a State, or first responder shall, as described in paragraph (5)—

(i) provide a written statement of need; and

(ii) agree to sign a confidentiality agreement; and

(C) the written confidentiality agreement or statement of need shall be submitted as soon as practicable, but not necessarily before the information is disclosed;

(74) may be disclosed if the Administrator determines that disclosure is relevant may be disclosed when relevant in any a proceeding under this Act, subject to the condition except that the disclosure is in such a proceeding shall be made in such a manner as to preserve confidentiality to the maximum extent practicable without impairing the proceeding; or

(8) shall be disclosed if the information is required to be disclosed

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or otherwise made public under any other provision of Federal law.

In any proceeding under section 552(a) of title 5, United States Code, to obtain information the disclosure of which has been denied because of the provisions of this subsection, the Administrator may not rely on section 552(b)(3) of such title to sustain the Administrator's action.

(e) Duration of Protection from Disclosure—

(1) IN GENERAL—

(A) DURATION OF PROTECTION FROM DISCLOSURE.—Subject to paragraph (2).

The Administrator shall protect from disclosure information described in subsection (c)(2) that meets the requirements of subsections (a) and (c)(1), and for a period of 10 years, information other than information described in subsection (c)(2) that meets the requirements of subsections (a) and (c), unless the person that asserted the claim notifies the Administrator that the person is withdrawing the claim, in which case the Administrator shall promptly make the information available to the public; or the Administrator otherwise becomes aware that the information does not qualify or no longer qualifies for protection against disclosure under subsection (a), in which case the Administrator shall take any actions required under subsection (f).

(B) EXTENSIONS—

(i) IN GENERAL.—Not later than the date that is 60 days before the expiration of the period described in subparagraph (A), the Administrator shall provide to the person that asserted the claim a notice of the impending expiration of the period.

(ii) STATEMENT—

(I) IN GENERAL.—Not later than the date that is 30 days before the expiration of the period described in subparagraph (A), a person reasserting the relevant claim shall submit to the Administrator a request for extension substantiating, in accordance with subsection (c)(3), the need to extend the period.

(II) ACTION BY ADMINISTRATOR.—Not later than the date of expiration of the period described in subparagraph (A), the Administrator shall, in accordance with subsection (f)(1)(C)—

(aa) review the request submitted under subclause

(I);

(bb) make a determination regarding whether the claim for which the request was submitted continues to meet the relevant criteria established under this section; and

(cc)(AA) grant an extension of 10 years; or

(BB) deny the request.

(C) NO LIMIT ON NUMBER OF EXTENSIONS.—There shall be no limit on the number of extensions granted under subparagraph (C), if the Administrator determines that the relevant request under subparagraph (B)(ii)(I)—

(i) establishes the need to extend the period; and

(ii) meets the requirements established by the Administrator.

(2) REVIEW AND RESUBSTANTIATION—

(A) DISCRETION OF ADMINISTRATOR.—The Administrator may require, under this subsection, any person that has claimed protection for information against disclosure under this

Commented [A6]: This should be moved up to (a), where it appears in TSCA currently. It is true that, in TSCA currently, it appears after the list of exceptions from protection (as it does here), but those exceptions are listed in (a) in current TSCA, and this provision is not germane to the exceptions, it's germane to the overall scope of protection in a.

Commented [A7]: The "1" should be dropped, with, if deemed necessary, the phrase "the applicable requirements of" added before "c". Presumably the reason this refers to c1 and the next clause refers to c generally is because c3 does not apply to this information. But c5 does.

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section, whether before, on, or after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to reassert and substantiate or resubstantiate the claim in accordance with this subsection (c)—

(i) after the chemical substance is identified as a high-priority substance under section 6(b) and until the completion of the risk evaluation for the chemical substance;

(ii) for any inactive chemical substance identified under section 8(b)(5)(B); or

(iii) in limited circumstances, if the Administrator determines that disclosure of certain information currently protected from disclosure would assist the Administrator in conducting risk evaluations or promulgating rules pursuant to section 6

(B) REVIEW REQUIRED.—The Administrator shall review a claim for protection of information against disclosure under subsection (a) and require any person that has claimed protection for that information, whether before, on, or after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to withdraw or reassert and substantiate or resubstantiate the claim in accordance with this section—

(i) as necessary to determine whether the information qualifies for an exemption from disclosure in connection with a request for information received by the Administrator under section 552 of title 5, United States Code;

(ii) if the Administrator has a reasonable basis to believe that the information does not qualify for protection against disclosure under subsection (a); or

(iii) for any chemical substance the Administrator determines in accordance with section 6(b)(4)(A) presents an unreasonable risk of injury to health or the environment.

(C) ACTION BY RECIPIENT.—If the Administrator makes a request under subparagraph (A) or (B), the recipient of the request shall—

(i) reassert and substantiate or resubstantiate the claim; or
(ii) withdraw the claim.

(D) PERIOD OF PROTECTION.—Protection from disclosure of information subject to a claim that is reviewed and approved by the Administrator under this paragraph shall apply for a period of 10 years from the date of approval, subject to any subsequent request by the Administrator under this paragraph.

(3) UNIQUE IDENTIFIER.—The Administrator shall—

(A)(i) develop a system to assign a unique identifier to each specific chemical identity for which the Administrator approves a request for protection from disclosure, other than a specific chemical identity or structurally descriptive generic term; and

(ii) apply that identifier consistently to all information relevant to the applicable chemical substance;

(B) annually publish and update a list of chemical substances, referred to by unique identifier, for which claims to protect the specific chemical identity from disclosure have been approved, including the expiration date for each such claim;

(C) ensure that any nonconfidential information received by the Administrator with respect to such a chemical substance during the period of protection from disclosure—

(i) is made public; and
(ii) identifies the chemical substance using the unique identifier; and

Commented [A8]: Repeating comment from preceding draft: this will make these disclosure grounds exclusive. It seems odd to preclude EPA from internally reviewing claims (as opposed to requiring substantiation), and it's not clear how, eg, EPA would make the (B)(ii) finding if it could not review a claim.

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(D) for each claim for protection of specific chemical identity that has been denied by the Administrator or expired, or that has been withdrawn by the submitter, provide public access to the specific chemical identity clearly linked to all nonconfidential information received by the Administrator with respect to the chemical substance to the maximum extent practicable/feasible.

Commented [A9]: To address House Democrat concerns

(f) Duties of Administrator.—

(1) DETERMINATION.—

(A) IN GENERAL.—Except for claims regarding information described in subsection (c)(2), the Administrator shall, subject to subparagraph (C), not later than 90 days after the receipt of a claim under subsection (c), and not later than 30 days after the receipt of a request for extension of a claim under subsection (e) or a request under subsection (b)(4)(D), review and approve, approve in part, or deny the claim or request.

(A)(B) REASONS FOR DENIAL. If the Administrator denies or denies in part a claim or request under subparagraph (A) the Administrator shall provide to the person that submitted the claim or request a written statement of the reasons for the denial or denial in part of the claim or request.

(B)(C) SUBSETS.—The Administrator shall—

(i) except for claims described in subsection (c)(2)(viii), review all claims or requests under this section for the protection against disclosure of the specific identity of a chemical substance; and

(ii) review a representative subset, comprising at least 25 percent, of all other claims or requests for protection against disclosure.

(D) EFFECT OF FAILURE TO ACT.—The failure of the Administrator to make a decision regarding a claim or request for protection against disclosure or extension under this section shall not have the effect of denying or eliminating a claim or request for protection against disclosure.

(E) DETERMINATION UNDER SUBSECTION (b)(4)(D) --- The Administrator shall, not later than 30 days after the receipt of a request under subsection (b)(4)(D) and with the objective of ensuring that information relevant to the protection of health and the environment is disclosed to the maximum extent practicable, determine whether the documentation provided by the person rebuts what shall be the presumption of the Administrator that the public interest in the disclosure of the information outweighs the public or proprietary interest in maintaining the protection for all or a portion of the information that the person has requested not be disclosed or for which disclosure be delayed. If no request for nondisclosure or delay is submitted to the Administrator or the Administrator denies the request under paragraph 1(B), the Administrator shall promptly make public the information pursuant to this section.

Commented [A10]: This should be changed to vii, since a category of information dropped from c2.

Commented [A11]: This should say something like: Determination of requests under subsection b4D. The determination is under this provision.

Commented [A12]: The denial is under A, not B

(2) NOTIFICATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B) and subsections (b), (d) and (e), if the Administrator denies or denies in part a claim or request under paragraph (1), determines that the information does not qualify or no longer qualifies for protection against disclosure under subsection (a), intends to release information pursuant to subsection (d), or promulgates a rule under section 6(a) establishing a ban or phase-out of a chemical substance,

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the Administrator shall notify, in writing, the person that submitted the claim of the intent of the Administrator to release the information. The notice shall be furnished by certified mail (return receipt requested), by personal delivery, or by other means which allows verification of the fact and date of receipt.

(B) RELEASE OF INFORMATION.—Except as provided in subparagraph (C), the Administrator shall not release information under this subsection until the date that is 30 days after the date on which the person that submitted the claim or request receives notification under subparagraph (A).

(C) EXCEPTIONS.—

(i) FIFTEEN DAY NOTIFICATION: For information under subsections (d)(3), (d)(4), (d)(5) and (i), the Administrator shall not release that information until the date that is 15 days after the date on which the person that submitted the claim or request receives a notification, unless, for information under subsection (d)(3), the Administrator determines that release of the information is necessary to protect against an imminent and substantial harm to health or the environment, in which case no prior notification shall be necessary.

(ii) NOTIFICATION AS SOON AS PRACTICABLE.—For information under paragraph (6) of subsection (e), the Administrator shall notify the person that submitted the information that the information has been disclosed as soon as practicable after disclosure of the information.

(iii) NO NOTIFICATION REQUIRED.—Notification shall not be required—

(I) for the disclosure of information under paragraphs (1), (2), (7), or (8) of subsection (d); or

(II) for the disclosure of information for which—

(aa) a notice under subsection (e)(1)(B)(i) was received; and

(bb) no request was received by the Administrator on or before the date of expiration of the period for which protection from disclosure applies.

(3) APPEALS.—

(A) IN GENERAL.—If a person receives a notification under paragraph (2) and believes disclosure of the information is prohibited under subsection (a), before the date on which the information is to be released pursuant to paragraph (2)(B) or (2)(C), the person may bring an action to restrain disclosure of the information in—

(i) the United States district court of the district in which the complainant resides or has the principal place of business; or

(ii) the United States District Court for the District of Columbia.

(B) NO DISCLOSURE.—The Administrator shall not disclose any information that is the subject of an appeal under this section before the date on which the applicable court rules on an action under subparagraph (A).

(B)(C) This paragraph shall not apply to disclosure of information described under subsections (d)(4) and (f).

(4) REQUEST AND NOTIFICATION SYSTEM.—The Administrator, in consultation with the Director of the Centers for Disease Control and Prevention, shall develop a request and notification

Commented [A13]: This renders inapplicable all of 3, including the right to appeal. Presumably you just meant to exempt this information from B.

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system that allows for expedient and swift access to information disclosed pursuant to paragraphs (5) and (6) of subsection (d), in a format and language that is readily accessible and understandable.

(g)(4) CRIMINAL PENALTY FOR WRONGFUL DISCLOSURE.—

(1) OFFICERS AND EMPLOYEES OF UNITED STATES:—

(A) IN GENERAL.—Subject to paragraph (2), Any a current or former officer or employee of the United States described in subparagraph (B) shall be guilty of a misdemeanor and fined under title 18, United States Code, or imprisoned for not more than 1 year, or both, or former officer or employee of the United States, who

(B) DESCRIPTION.—A current or former officer or employee of the United States referred to in subparagraph (A) is a current or former officer or employee of the United States who—

(i) by virtue of that such employment or official position has obtained possession of, or has access to, material the disclosure of which is prohibited by subsection (a), and

(B) who knowing that disclosure of that such material is prohibited by such subsection (a), willfully discloses the material in any manner to any person not entitled to receive that material;

Commented [A14]: Per earlier TA: the information in question will already have been submitted. How will EPA influence of determine its format and language? And subsection g already provides timeframes for release, so what more would EPA do to allow for expedient access?

Commented [A15]: Senate proposes HLC restore (with any conforming changes necessary) existing statute for this subsection and subjecting ALL people given access to information under this section to the criminal penalties under the "knowing and willful" standard, subject to assurance that a medical professional who discloses such information to their patient as part of diagnosis/treatment would not be subject to this penalty.

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~~shall be guilty of a misdemeanor and fined not more than \$5,000 or imprisoned for not more than one year, or both.~~

~~(2) OTHER LAWS.—Section 1905 of title 18, United States Code, does shall not apply with respect to the publishing, divulging, disclosure, or making known of, or making available, information reported or otherwise obtained under this Act.~~

~~(32) CONTRACTORS.—For the purposes of this subsection paragraph (1), any contractor with the United States that who is provided furnished information in accordance with as authorized by subsection (d)(2), including and any employee of that any such contractor, shall be considered to be an employee of the United States.~~

~~(hi) APPLICABILITY.—~~

~~(1) IN GENERAL.—Except as otherwise provided in this section, section 8, or any other applicable federal law, the Administrator shall have no authority—~~

~~(A) to require the substantiation or resubstantiation of a claim for the protection from disclosure of information reported to or otherwise obtained by the Administrator under this Act prior to the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act; or~~

~~(B) to impose substantiation or resubstantiation requirements under this Act that are more extensive than those required under this section.~~

~~(2) ACTIONS PRIOR TO PROMULGATION OF RULES.—Nothing in this Act prevents the Administrator from reviewing, requiring substantiation or resubstantiation for, or approving, approving in part or denying any claim for the protection from disclosure of information before the effective date of such rules applicable to those claims as the Administrator may promulgate after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.~~

~~(ij) ACCESS BY CONGRESS.—Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this Act shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.~~

~~(e) DESIGNATION AND RELEASE OF CONFIDENTIAL DATA.—(1) In submitting data under this Act, a manufacturer, processor, or distributor in commerce may (A) designate the data which such person believes is entitled to confidential treatment under subsection (a), and (B) submit such designated data separately from other data submitted under this Act. A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.~~

~~(2)(A) Except as provided by subparagraph (B), if the Administrator proposes to release for inspection data which has been designated under paragraph (1)(A), the Administrator shall notify, in writing and by certified mail, the manufacturer, processor, or distributor in commerce who submitted such data of the intent to release such data. If the release of such data is to be made pursuant to a request made under section 552(a) of title 5, United States Code, such notice shall be given immediately upon approval of such request by the Administrator. The Administrator may not release such data until the expiration of 30 days after the manufacturer, processor, or distributor in commerce submitting such data has received the notice required by this subparagraph.~~

~~(B)(i) Subparagraph (A) shall not apply to the release of information~~

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~~under paragraph (1), (2), (3), or (4) of subsection (a), except that the Administrator may not release data under paragraph (3) of subsection (a) unless the Administrator has notified each manufacturer, processor, and distributor in commerce who submitted such data of such release. Such notice shall be made in writing by certified mail at least 15 days before the release of such data, except that if the Administrator determines that the release of such data is necessary to protect against an imminent, unreasonable risk of injury to health or the environment, such notice may be made by such means as the Administrator determines will provide notice at least 24 hours before such release is made.~~

~~.....(ii) Subparagraph (A) shall not apply to the release of information described in subsection (b)(1) other than information described in the second sentence of such subsection.~~

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 4/22/2016 8:47:07 PM
To: Michal_Freedhoff@markey.senate.gov
Subject: Sen. Markey TSCA TA on section 6 TA - House R language

Michal,

This TA responds to the request on section 6 TA followup on House R language.

Section 4 requires a statement of need for testing, requires a tiered approach, and requires identification of protocols and methodologies. Those are certainly manageable in the context of a section 6 rule, but they impose some requirements that otherwise would not be imposed in section 6. There also may be some difficulty in applying the provisions in 4(b)(4) regarding expiration of the reimbursement period, since the section 6 rule may not have a fixed testing requirement or period for testing but rather may have a more open ended obligation to conduct testing under circumstances specified in the rule. But these issues should be manageable.

The potentially more substantive issue is that the latest HLC version of section 4 we have seen does not provide any guidance on who can be made to test in a test rule or order under the new 4(a)(2) authority. But this is an issue with section 4 itself, and not unique to the incorporation of section 4 into section 6. TSCA 4(b)(3) requires that each test rule impose testing obligations on all manufacturers of the chemical substance, or all processors, or both, depending on which 4(a)(1) finding EPA makes to support the rule (may present, or substantial production/release/exposure). Specifically, it provides that "the following persons [all manufacturers and/or all processors] shall be required to conduct tests and submit data on a chemical substances or mixture subject to a rule under 4(a). . . .", and then lays out whether the entities required to test are the manufacturers or processors or both, depending on which 4(a)(1) finding was made. Because EPA will not be making one of these findings under 4(a)(2), the current 4(b)(3) is not a great fit, since it assumes that one of those findings will have been made to support each test rule.

This TA only responds to changes since the last version at the time we were reviewing. All previously offered TA is still germane to the extent the provision has not changed since the TA was offered. The technical assistance does not necessarily represent the policy positions of the agency and the administration on the bill, the draft language and the comments.

Please let me know if any questions. Thanks,

Sven

Sven-Erik Kaiser

U.S. EPA

Office of Congressional and Intergovernmental Relations

1200 Pennsylvania Ave., NW (1305A)

Washington, DC 20460

202-566-2753

From: Freedhoff, Michal (Markey) [mailto:Michal_Freedhoff@markey.senate.gov]

Sent: Friday, April 22, 2016 1:50 PM

To: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>

Subject: question on your 6 TA from last night

<!--[if !supportLists]-->1 <!--[endif]-->(G) by striking “and
monitor or conduct
<!--[if !supportLists]-->2 <!--[endif]--
>tests” and inserting “or monitor or conduct
<!--[if !supportLists]-->3 <!--[endif]-->tests pursuant to section 4”
<!--[if !supportAnnotations]-->[A1]<!--[endif]--> in paragraph (4);
<!--[if !supportLists]-->4 <!--[endif]-->and

This was a House R request. What additional requirements will those be? btw, Senate agreed to add test orders to 4(a)(1) yesterday.

Michal Ilana Freedhoff, Ph.D.

Director of Oversight & Investigations

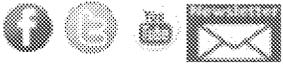
Office of Senator Edward J. Markey

255 Dirksen Senate Office Building

Washington, DC 20510

202-224-2742

Connect with Senator Markey



<!--[if !supportAnnotations]-->

.....
<!--[endif]-->

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 3/21/2016 3:45:17 PM
To: 'Freedhoff, Michal (Markey)' [Michal_Freedhoff@markey.senate.gov]
Subject: Sen. Markey TSCA TA request - section 5 determinations

Michal – got it, checking. Are you meeting with the House today? Thanks,
Sven

Sven-Erik Kaiser
U.S. EPA
Office of Congressional and Intergovernmental Relations
1200 Pennsylvania Ave., NW (1305A)
Washington, DC 20460
202-566-2753

From: Freedhoff, Michal (Markey) [mailto:Michal_Freedhoff@markey.senate.gov]
Sent: Monday, March 21, 2016 11:09 AM
To: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>
Subject: TA request - section 5 determinations

Sven

Can you please take a look at this? This incorporates your TA but includes 2 different formulations for the (3) restrictions text. I'd like your take generally, but on the second formulation, I'd like to know whether it addresses the various 'unreasonable risk' questions adequately by referring back to (2)(A) instead of typing the entire text string again.

Thanks
michal

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 4/17/2016 1:00:29 AM
To: Freedhoff, Michal (Markey) [Michal_Freedhoff@markey.senate.gov]
Subject: Sen. Markey TSCA TA Re: one more try on nomenclature

Michal- got it. Thanks,
Sven

On Apr 16, 2016, at 8:50 PM, Freedhoff, Michal (Markey) <Michal_Freedhoff@markey.senate.gov> wrote:

Thanks – minor (hopefully) revisions from last one.
<04-16-16v2Markey TSCA TA Nomenclature 8 45PM.docx>

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 3/9/2016 3:26:58 PM
To: Michal_Freedhoff@markey.senate.gov
Subject: Sen. Markey TSCA reform TA call

Michal, Nichole and Jim asked me to set up a TA call today at 4:30pm. Please call [Ex. 6 - Personal Privacy], code [Ex. 6 - Personal Privacy]. We'll plan to discuss the potential issues in the Senate offer along with other outstanding TA if time permits. Please let me know if any questions. Thanks,
Sven

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 4/22/2016 6:20:15 PM
To: 'Freedhoff, Michal (Markey)' [Michal_Freedhoff@markey.senate.gov]
Subject: Sen. Markey TSCA TA on metals

Michal,
This TA responds to the request on metals.

EPA believes that the language regarding the development of a successor document is unnecessarily limiting. Developing the 2007 framework was a five-year multi-step process. There may be litigation risk in locking in the exact process used in developing the 2007 framework with the word "following," which could undermine a metal risk assessment. EPA might also achieve greater efficiencies if given more discretion to appropriately modify this process, particularly for relatively minor changes or updates to the existing framework. We suggest the following small change to address these issues:

"The Administrator shall prioritize and assess metals and metal compounds in accordance with the U.S. Environmental Protection Agency's Framework for Metals Assessment (EPA 120/R-07/001) (March 2007), or a successor document developed in consultation with expert scientists in metals risk assessment, following based on the process used in the development of the 2007 framework."

This TA only responds to changes since the last version at the time we were reviewing. All previously offered TA is still germane to the extent the provision has not changed since the TA was offered. The technical assistance does not necessarily represent the policy positions of the agency and the administration on the bill, the draft language and the comments.

Please let me know if any questions. Thanks,
Sven

From: Freedhoff, Michal (Markey)
[mailto:Michal_Freedhoff@markey.senate.gov]
Sent: Friday, April 22, 2016 11:58 AM
To: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>
Subject: more on metals

This work?

"The Administrator shall prioritize and assess metals and metal compounds in accordance with the U.S. Environmental Protection Agency's Framework for Metals Assessment (EPA 120/R-07/001) (March 2007), or a successor document developed in consultation with expert scientists in metals risk assessment, following the process used in the development of the 2007 framework."

Michal Ilana Freedhoff, Ph.D.
Director of Oversight & Investigations
Office of Senator Edward J. Markey
255 Dirksen Senate Office Building

Washington, DC 20510
202-224-2742

Connect with Senator Markey

<image001.png><image002.png><image003.png><image004.jpg>

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 3/20/2016 5:17:34 PM
To: Freedhoff, Michal (Markey) [Michal_Freedhoff@markey.senate.gov]
Subject: Sen. Markey TSCA TA request on partial risk evaluations

Michal,
Got it- checking. Thanks,
Sven

On Mar 20, 2016, at 11:15 AM, Freedhoff, Michal (Markey) <Michal_Freedhoff@markey.senate.gov> wrote:

Sven

For the partial RES you flagged for us last week, did EPA use costs when concluding unreasonable risk for those substances/uses? If EPA was forced to re-do elements of these REs, would the removal of costs and other non-risk factors alter the trajectory EPA feels these RES and rules is on such that it might make sense to delay their completion? Would EPA be proposing to go through with the RES and associated risk management for those uses using old definitions of unreasonable risk, cost considerations in rulemaking, and use of science? If EPA were planning to evaluate the additional uses of the substances, would EPA then plan to use the 'new-tsca' versions of these terms/considerations? Given the substances in question and their uses, would EPA expect to prioritize these substances and the rest of the uses not currently being considered by EPA soon, or has EPA in its view already addressed the real risks from these substances?

Thanks - just trying to figure out what to do with this and how to draft it etc. Not a weekend thing for you guys!

M

Michal Ilana Freedhoff, Ph.D.
Director of Oversight and Investigations
Office of Senator Edward J. Markey (D-MA)

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 4/14/2016 6:24:43 PM
To: Freedhoff, Michal (Markey) [Michal_Freedhoff@markey.senate.gov]
Subject: Re: pls quickly check this text from pbts

Will do

On Apr 14, 2016, at 2:18 PM, Freedhoff, Michal (Markey) <Michal_Freedhoff@markey.senate.gov> wrote:

And this one

Michal Ilana Freedhoff, Ph.D.
Director of Oversight & Investigations
Office of Senator Edward J. Markey
255 Dirksen Senate Office Building
Washington, DC 20510
202-224-2742

Connect with Senator Markey

<image001.png><image002.png><image003.png><image004.jpg>

From: Kaiser, Sven-Erik [<mailto:Kaiser.Sven-Erik@epa.gov>]
Sent: Thursday, April 14, 2016 12:09 PM
To: Freedhoff, Michal (Markey)
Subject: Re: pls quickly check this text from pbts

Got it

On Apr 14, 2016, at 12:03 PM, Freedhoff, Michal (Markey) <Michal_Freedhoff@markey.senate.gov> wrote:

(4) In selecting among prohibitions and other restrictions promulgated in a rule under subsection (a) pursuant to paragraph (1), the Administrator shall ensure that the chemical substance subject to the rule does not present an unreasonable risk of injury to health or the environment that is identified by the Administrator without consideration of costs and other non-risk factors, including an unreasonable risk of injury to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator, under the conditions of use, and shall reduce exposure to the substance to the extent practicable.

Michal Ilana Freedhoff, Ph.D.
Director of Oversight & Investigations
Office of Senator Edward J. Markey
255 Dirksen Senate Office Building
Washington, DC 20510
202-224-2742

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<image001.png><image002.png><image003.png><image004.jpg>

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 9/27/2016 7:03:04 PM
To: Hunt, Jasmine (Durbin) [Jasmine_Hunt@durbin.senate.gov]
CC: Swanson, Daniel (Judiciary-Dem) [Daniel_Swanson@Judiciary-dem.senate.gov]
Subject: Sen. Durbin Letter Regarding Initial 10 TSCA Chemicals

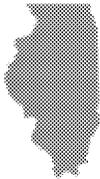
Jasmine – thanks for the letter about including asbestos and flame retardants on the initial list of 10 chemicals for TSCA risk evaluations. We'll provide a prompt response. Please let me know if any additional questions.
Thanks,
Sven

Sven-Erik Kaiser
U.S. EPA
Office of Congressional and Intergovernmental Relations
1200 Pennsylvania Ave., NW (1305A)
Washington, DC 20460
202-566-2753

From: Hunt, Jasmine (Durbin) [mailto:Jasmine_Hunt@durbin.senate.gov]
Sent: Tuesday, September 27, 2016 2:56 PM
To: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>
Cc: Swanson, Daniel (Judiciary-Dem) <Daniel_Swanson@Judiciary-dem.senate.gov>
Subject: Durbin Letter Regarding Initial 10 TSCA Chemicals

Jasmine Hunt

Office of Senator Richard J. Durbin | Democratic Whip
711 Senate Hart Office Building | 📞 202.224.2152 | 📠 202.224.0400
✉ jasmine_hunt@durbin.senate.gov



Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 4/3/2016 6:19:35 PM
To: Michal_Freedhoff@markey.senate.gov; jonathan_black@tomudall.senate.gov; Adrian_Deveny@merkley.senate.gov
Subject: Sen. Markey TSCA TA request on PFOA SNUR

Michal,

This responds to the TA request on PFOA. Please let me know if any questions. Thanks,
Sven

Is there a PFOA SNUR in the works that relates to articles?

Not PFOA per se, but for related chemicals, yes. In January 2015 EPA proposed a SNUR for long-chain perfluoroalkyl carboxylate (LCPFAC) chemical substances that would designate as a significant new use manufacturing (including importing) or processing of an identified subset of LCPFAC chemical substances for any use that will not be ongoing after December 31, 2015, and all other LCPFAC chemicals substances for which there are currently no ongoing uses. For this SNUR, EPA is also proposing to make inapplicable the exemption for persons who import LCPFAC chemical substances as part of articles.

I thought PFOA was grandfathered onto the inventory?

Yes, PFOA was included on the original TSCA Inventory.

From: "Freedhoff, Michal (Markey)" <Michal_Freedhoff@markey.senate.gov>
Date: March 29, 2016 at 3:29:26 PM EDT
To: "Kaiser, Sven-Erik" <Kaiser.Sven-Erik@epa.gov>
Cc: "Black, Jonathan (Tom Udall)" <Jonathan_Black@tomudall.senate.gov>, "Deveny, Adrian (Merkley)" <Adrian_Deveny@merkley.senate.gov>
Subject: PFOA SNUR?

Sven

Is there a PFOA SNUR in the works that relates to articles? I thought PFOA was grandfathered onto the inventory?

Thx
M

Michal Ilana Freedhoff, Ph.D.
Director of Oversight and Investigations
Office of Senator Edward J. Markey (D-MA)

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 4/26/2016 3:16:28 PM
To: Freedhoff, Michal (Markey) [Michal_Freedhoff@markey.senate.gov]
Subject: Re: Draft in progress

Availability? How about a call at 11:30?

On Apr 26, 2016, at 11:14 AM, Freedhoff, Michal (Markey) <Michal_Freedhoff@markey.senate.gov> wrote:

YES< definitely. thanks.

Michal Ilana Freedhoff, Ph.D.
Director of Oversight & Investigations
Office of Senator Edward J. Markey
255 Dirksen Senate Office Building
Washington, DC 20510
202-224-2742

Connect with Senator Markey

<image001.png><image002.png><image003.png><image004.jpg>

From: Kaiser, Sven-Erik [mailto:Kaiser.Sven-Erik@epa.gov]
Sent: Tuesday, April 26, 2016 11:14 AM
To: Freedhoff, Michal (Markey)
Subject: Re: Draft in progress

Michal,

Thanks for sending the 4-24 Senate response. We have some thoughts that we could share if TA helpful. In particular, cost language in section 6(c)(2)(A)(iv), along with some other minor observations. Thanks, Sven

On Apr 24, 2016, at 3:50 PM, Freedhoff, Michal (Markey) <Michal_Freedhoff@markey.senate.gov> wrote:

Thanks for your help. This is what just got sent back with an explanatory email.

Michal Ilana Freedhoff, Ph.D.
Director of Oversight and Investigations
Office of Senator Edward J. Markey (D-MA)

<TSCA Full Draft Response(HLC 4-24).docx>
<Markey.TSCA TA.House Section 5 (4-23).docx>
<Markey.TSCA TA.nomenclature with savings (4-20).docx>

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 3/25/2016 4:03:32 PM
To: 'Freedhoff, Michal (Markey)' [Michal_Freedhoff@markey.senate.gov]; Black, Jonathan (Tom Udall) [Jonathan_Black@tomudall.senate.gov]; Deveny, Adrian (Merkley) [Adrian_Deveny@merkleysenate.gov]
Subject: Sen. Markey TSCA TA Request on Section 4(a)(1)

Michal – please see TA below responding to the request on section 4(a)(1). Please let me know if any questions. Thanks,
Sven

Question

In the list of items under senate 4(a)(1) - list of 4 conditions where there is testing allowed by order. In discussing a hybrid House/Senate concept, a question was raised about whether RULES could be required for some or all of the 4(1)(B) items rather than orders. Tell us of any downsides - argument is that epa is already writing a 6(a) rule that may include a restriction related to testing, and same w potentially 5(d). What we'd like is your assessment of scenarios in which a requirement to do rules rather than orders in 4(1)(B) would be a problem. It may be that all scenarios are problems - but it may also be that there are some scenarios where it would not be.

SEC. 4. TESTING OF CHEMICAL SUBSTANCES AND MIXTURES.

(a) TESTING REQUIREMENTS

- (1) IN GENERAL. – The Administrator may, by rule, order, or consent agreement, require the development of new information relating to a chemical substance or mixture if the Administrator determines that the information is necessary –
- (A) to review a notice under section 5(d) or to perform a risk evaluation under section 6;
 - (B) to implement a requirement imposed in a rule, consent agreement or order issued under section 5(d) or under a rule promulgated under section 6(a);
 - (C) pursuant to section 12(a)(4); or
 - (D) at the request of the implementing authority under another Federal law, to meet the regulatory testing needs of that authority.

EPA Response:

We have a number of concerns with the suggested removal of order authority from all or part of the Senate's Section 4(a)(1).

EPA's difficulty in requiring development of information on chemicals is a major problem under current law. There are two main issues. First, existing law requires EPA to make a risk or exposure finding in order to require testing under Section 4. When data on a chemical is lacking, it is very challenging for EPA to exercise its Section 4 authorities. Second, even if EPA is able to clear the initial Section 4 hurdle, it must then go through a lengthy rulemaking to require the testing and get the data - potentially a 3-5 year process. Continuation of the rulemaking requirement unnecessarily delays EPA from getting the information it needs to assess a chemical's safety, and would almost certainly prevent EPA from meeting statutory deadlines under the House and Senate bills for completing risk evaluations

With respect to the argument you described, it is hypothetically possible that EPA might promulgate a testing requirement concurrently with a section 6(a) or 5(d) rule. But it is also possible that the testing need will not become apparent until the restriction under 5 or 6 is already in place. If successful implementation of a protective requirement is dependent on information to be developed under Section 4, it is imperative that EPA have order authority to require that information in an expeditious manner.

The Administration's Principles very clearly call for EPA to be given "the necessary authority and tools...to quickly and efficiently require testing or obtain other information from manufacturers that is relevant to determining the safety of chemicals." The recent Administration's views letter echoes that sentiment, commending both the House and Senate for providing EPA with new order authority in Section 4. We'd underscore the importance of order authority again here.

Sven-Erik Kaiser
U.S. EPA
Office of Congressional and Intergovernmental Relations
1200 Pennsylvania Ave., NW (1305A)
Washington, DC 20460
202-566-2753

From: Freedhoff, Michal (Markey) [<mailto:Michal.Freedhoff@markey.senate.gov>]
Sent: Wednesday, March 23, 2016 3:48 PM
To: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>
Cc: Black, Jonathan (Tom Udall) <Jonathan.Black@tomudall.senate.gov>; Deveny, Adrian (Merkley) <Adrian.Deveny@merkeley.senate.gov>
Subject: Section 4

Sven

In the list of items under senate 4(a)(1) - list of 4 conditions where there is testing allowed by order. In discussing a hybrid House/Senate concept, a question was raised about whether RULES could be required for some or all of the 4(1)(B) items rather than orders. Tell us of any downsides - argument is that epa is already writing a 6(a) rule that may include a restriction related to testing, and same w potentially 5(d). What we'd like is your assessment of scenarios in which a requirement to do rules rather than orders in 4(1)(B) would be a problem. It may be that all scenarios are problems - but it may also be that there are some scenarios where it would not be.

Thanks
M

Michal Ilana Freedhoff, Ph.D.
Director of Oversight and Investigations
Office of Senator Edward J. Markey (D-MA)

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 4/9/2016 7:22:36 PM
To: Michal_Freedhoff@markey.senate.gov
Subject: Re: Sen. Markey TSCA TA - Section 26 followup questions

Michal- hold on this- we have a contrary internal view to resolve. Sorry.

On Apr 9, 2016, at 3:21 PM, Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov> wrote:

Michal,
Responses to the two section 26 followup questions.

On p 16 lines 17-19, are you saying you need least burdensome too? Because that's the way this is drafted in my view.

Response: Yes. The language that is there would make these actions subject to pre-reform TSCA.

We want to delete "as in effect before such date of enactment" on lines 18/19

Response : ok

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 4/26/2016 3:13:55 PM
To: Freedhoff, Michal (Markey) [Michal_Freedhoff@markey.senate.gov]
Subject: Re: Draft in progress

Michal,

Thanks for sending the 4-24 Senate response. We have some thoughts that we could share if TA helpful. In particular, cost language in section 6(c)(2)(A)(iv), along with some other minor observations. Thanks, Sven

On Apr 24, 2016, at 3:50 PM, Freedhoff, Michal (Markey) <Michal_Freedhoff@markey.senate.gov> wrote:

Thanks for your help. This is what just got sent back with an explanatory email.

Michal Ilana Freedhoff, Ph.D.
Director of Oversight and Investigations
Office of Senator Edward J. Markey (D-MA)

<TSCA Full Draft Response(HLC 4-24).docx>
<Markey.TSCA TA.House Section 5 (4-23).docx>
<Markey.TSCA TA.nomenclature with savings (4-20).docx>

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 3/18/2016 8:06:39 PM
To: 'Freedhoff, Michal (Markey)' [Michal_Freedhoff@markey.senate.gov]
Subject: RE: Sen. Markey TSCA TA - Another request on 6(a) rules

Thanks

Sven-Erik Kaiser
U.S. EPA
Office of Congressional and Intergovernmental Relations
1200 Pennsylvania Ave., NW (1305A)
Washington, DC 20460
202-566-2753

From: Freedhoff, Michal (Markey) [mailto:Michal_Freedhoff@markey.senate.gov]
Sent: Friday, March 18, 2016 4:06 PM
To: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>
Subject: Re: Sen. Markey TSCA TA - Another request on 6(a) rules

Yes. Senate was always "meet the safety std". Not meet or will meet. I tried on this when we took out the safety std definition but the truth is that the senate bill always removed it.

Michal Ilana Freedhoff, Ph.D.
Director of Oversight and Investigations
Office of Senator Edward J. Markey (D-MA)

From: Kaiser, Sven-Erik
Sent: Friday, March 18, 2016 3:54 PM
To: Freedhoff, Michal (Markey)
Subject: Sen. Markey TSCA TA - Another request on 6(a) rules

Michal – got it. Thanks. Also, did you see the question we asked at the top of the 6(a) options TA? Thanks, Sven

Sven-Erik Kaiser
U.S. EPA
Office of Congressional and Intergovernmental Relations
1200 Pennsylvania Ave., NW (1305A)
Washington, DC 20460
202-566-2753

From: Freedhoff, Michal (Markey) [mailto:Michal_Freedhoff@markey.senate.gov]
Sent: Friday, March 18, 2016 3:49 PM
To: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>
Subject: Another TA request on 6(a) rules

Sven

Thanks for the table of alternatives on cost considerations in rulemaking. There was an interest in discussion today in seeing whether there is a way to flip the presumption of the House language in a way that said:

- epa identify remedies that address the unreasonable risk
- from those remedies, then somehow consider costs, whether by using the word cost-effective or some other word.

Can you help w some options (1 or more, however many occur to you), with eye to putting them into that chart? Ideally, I'd like options that fall closer to the Senate side rankings on both analytic burden and litigation risk but which helps the House feel that EPA will not choose the super-expensive unnecessary remedy.

Thanks
M

Michal Ilana Freedhoff, Ph.D.
Director of Oversight and Investigations
Office of Senator Edward J. Markey (D-MA)

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 4/12/2016 1:01:05 AM
To: Freedhoff, Michal (Markey) [Michal_Freedhoff@markey.senate.gov]
Subject: Re: Sen. Markey TSCA TA requests on costs and section 4

Yes that tomorrow ok?

On Apr 11, 2016, at 8:58 PM, Freedhoff, Michal (Markey) <Michal_Freedhoff@markey.senate.gov> wrote:

yes

Michal Ilana Freedhoff, Ph.D.
Director of Oversight & Investigations
Office of Senator Edward J. Markey
255 Dirksen Senate Office Building
Washington, DC 20510
202-224-2742

Connect with Senator Markey

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From: Kaiser, Sven-Erik [mailto:Kaiser.Sven-Erik@epa.gov]
Sent: Monday, April 11, 2016 8:53 PM
To: Freedhoff, Michal (Markey)
Subject: Sen. Markey TSCA TA requests on costs and section 4

Michal, do you need these two tonight , is early tomorrow ok? Thanks,
Sven

On Apr 11, 2016, at 8:37 PM, Freedhoff, Michal (Markey) <Michal_Freedhoff@markey.senate.gov> wrote:

Leg counsel is suggesting this. Problem?

[“(4) RELATIONSHIP TO OTHER LAW.—For purposes of this Act, a rule, order, or consent agreement issued under this subsection shall be treated as a rule, order, or consent agreement issued under subsection (a).”; [suggested addition to capture applicability of other provisions in TSCA to this new subsection in the same way as the other provisions apply to subsection (a)]]

Michal Ilana Freedhoff, Ph.D.
Director of Oversight & Investigations
Office of Senator Edward J. Markey
255 Dirksen Senate Office Building
Washington, DC 20510
202-224-2742

Connect with Senator Markey

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Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 3/25/2016 12:50:19 PM
To: Freedhoff, Michal (Markey) [Michal_Freedhoff@markey.senate.gov]
Subject: Re: Sen. Markey TSCA TA on partial risk evaluations

Michal- The 5 referenced partial risk evaluations were TCE, NMP, MC, ATO and HHCB. EPA found no concern for ATO (Antimony Trioxide) and HHCB (1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8,-hexamethylcyclopenta[γ]-2-benzopyran). 1-BP is a draft risk assessment, and was not included in the count. See EPA's website on TSCA Work Plan Assessments:

<https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/assessments-tsca-work-plan-chemicals>.

Please let me know if any additional questions. Thanks,

Sven

On Mar 25, 2016, at 7:51 AM, Freedhoff, Michal (Markey) <Michal_Freedhoff@markey.senate.gov> wrote:

Sorry, one last thing on this - you originally listed these chemicals as the subjects of these RES. But I thought in other TA you said there were 5. What is the 5th?

TCE, NMP, MC, and 1-BP.

Michal Ilana Freedhoff, Ph.D.
Director of Oversight and Investigations
Office of Senator Edward J. Markey (D-MA)

From: Kaiser, Sven-Erik
Sent: Thursday, March 24, 2016 6:48 PM
To: Freedhoff, Michal (Markey)
Subject: Sen. Markey TSCA TA on partial risk evaluations

Michal,
The attached TA responds to the request on partial risk evaluations. Please let me know if any questions.
Thanks,
Sven

Sven-Erik Kaiser
U.S. EPA
Office of Congressional and Intergovernmental Relations
1200 Pennsylvania Ave., NW (1305A)
Washington, DC 20460
202-566-2753

From: "Freedhoff, Michal (Markey)" <Michal_Freedhoff@markey.senate.gov>

Date: March 22, 2016 at 10:02:12 AM EDT

To: "Kaiser, Sven-Erik" <Kaiser.Sven-Erik@epa.gov>

Subject: RE: Sen. Markey TSCA TA on partial risk evaluations

Would this do it for you? I don't think a discussion about what you add below re cost considerations would be a constructive one. I am not sure that this works to address your concern re rules/deadlines though.

(3) (A) PRIOR-INITIATED EVALUATIONS[A1] —

(i) IN GENERAL.—Nothing in this Act prevents the Administrator from initiating a risk evaluation regarding a chemical substance, or from continuing or completing such risk evaluation or partial risk evaluation, prior to the effective date of the policies, procedures, and guidance required to be established by the Administrator under this Act[A2] .

(ii) INTEGRATION OF PRIOR POLICIES AND PROCEDURES.—

As relevant policies and procedures under this Act are established, to the maximum extent practicable, the Administrator shall integrate the policies and procedures into ongoing risk evaluations.

(B) ACTIONS COMPLETED PRIOR TO COMPLETION OF POLICIES

AND PROCEDURES.—Nothing in this Act requires the Administrator to revise or withdraw a completed risk evaluation or partial risk evaluation, determination or rule solely because the action was completed prior to the completion of a policy or procedure established under this Act.

Michal Ilana Freedhoff, Ph.D.
Director of Oversight & Investigations
Office of Senator Edward J. Markey
255 Dirksen Senate Office Building
Washington, DC 20510
202-224-2742

Connect with Senator Markey

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From: Kaiser, Sven-Erik [<mailto:Kaiser.Sven-Erik@epa.gov>]
Sent: Monday, March 21, 2016 6:25 PM
To: Freedhoff, Michal (Markey)
Subject: Sen. Markey TSCA TA on partial risk evaluations

Michal,
This TA responds to your request on partial risk evaluations. Please let me know if any questions. Thanks,
Sven

For the partial RES you flagged for us last week, did EPA use costs when concluding unreasonable risk for those substances/uses? If EPA was forced to re-do elements of these REs, would the removal of costs and other non-risk factors alter the trajectory EPA feels these RES and rules is on such that it might make sense to delay their completion? Would EPA be proposing to go through with the RES and associated risk management for those uses using old definitions of unreasonable risk, cost considerations in rulemaking, and use of science? If EPA were planning to evaluate the additional uses of the substances, would EPA then plan to use the 'new-tsca' versions of these terms/considerations? Given the substances in question and their uses, would EPA expect to prioritize these substances and the rest of the uses not currently being considered by EPA soon, or has EPA in its view already addressed the real risks from these substances?

Response: EPA has completed risk assessments for 5 chemicals under the TSCA Workplan process. Those assessments only consider risk. There is no cost consideration. 3 of the chemicals have high risk and are moving to the risk management phase. We are developing proposed rules. As required by TSCA we will balance costs and benefits (the value of risk reduction) and identify the least burdensome means to reduce the risk. We are scheduled to propose rules for these three chemicals later this year.

The risk assessments for all three of these chemicals had narrow scopes. We did not look at all uses of the chemicals as would be required under both House and Senate passed bills. We assume that if a bill passes

before we finalize these rules we would need to finalize them using the new rulemaking standard in the law. But because the risk assessments were done without consideration of costs, we would not need to redo the work for the uses which have already been assessed.

The issue we are flagging is that meeting the scoping intent of either bill would require a significant amount of additional work on these three chemicals to assess the uses that were not included in our final assessments. That could delay regulation of the uses with known risks. Modification of the cost considerations would take a little time but much less as the cost considerations under the current law are more onerous than either the House or Senate bills. If the Senate or House bill passed as drafted we would likely call these three chemicals high priority and make an argument that we can go forward with the narrower scoped regulations using the new standard. There is some legal vulnerability that we'd be prevented from doing so. Because the rulemaking deadlines in 6(c)(1) begin to run once EPA deems a chemical unsafe, EPA would be on a tighter time clock (4 years, as opposed to 3 years + 4 years) to both complete the risk evaluations AND any associated rulemakings with respect to other uses not part of the original evaluation. It is not clear to us whether those additional uses have risk. In the alternative, we could identify these three chemicals as high priority and then assess the additional uses before moving to risk management. The down side is that we would know there was risk for certain uses of these chemicals but we would be waiting to assess the remaining uses before doing any risk management.

Sven-Erik Kaiser
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Washington, DC 20460
202-566-2753

From: Freedhoff, Michal (Markey) [mailto:Michal_Freedhoff@markey.senate.gov]

Sent: Sunday, March 20, 2016 11:16 AM

To: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>

Subject: Questions on partial risk evaluations

Sven

For the partial RES you flagged for us last week, did EPA use costs when concluding unreasonable risk for those substances/uses? If EPA was forced to re-do elements of these REs, would the removal of costs and other non-risk factors alter the trajectory EPA feels these RES and rules is on such that it might make sense to delay their completion? Would EPA be proposing to go through with the RES and associated risk management for those uses using old definitions of unreasonable risk, cost considerations in rulemaking, and use of science? If EPA were planning to evaluate the additional uses of the substances, would EPA then plan to use the 'new-tasca' versions of these terms/considerations? Given the substances in question and their uses, would EPA expect to prioritize these substances and the rest of the uses not currently being considered by EPA soon, or has EPA in its view already addressed the real risks from these substances?

Thanks - just trying to figure out what to do with this and how to draft it etc. Not a weekend thing for you guys!

M

Michal Ilana Freedhoff, Ph.D.
Director of Oversight and Investigations
Office of Senator Edward J. Markey (D-MA)

EPA TA – needs clarifying to ensure section 6 activities can proceed as intended

EPA TA here and below

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 3/14/2016 7:44:47 PM
To: 'Karakitsos, Dimitri (EPW)' [Dimitri_Karakitsos@epw.senate.gov]
Subject: SEPW TSCA TA Fees Question

Dimitri,
This TA responds to your followup question on fees.

Question:

An issue was raised last week with this paragraph because of its reference to no obligation under FACA. This is something I don't believe has ever been raised by EPA TA. Any thoughts or concerns? I am trying to dig up where we pulled the language from but if you all have any experience with similar language in other statutes that works it would be helpful to know. Makes perfect sense to me that EPA would meet with the people subject to fees to ensure everything works for all parties, having other groups who have nothing to do with the fees is does not seem necessary.

Response:

EPA had previous conversations with Senate staff on this issue and walked through the PRIA legislative development process led by stakeholders. Based on those conversations, it was clear there was not enough time for such a detailed process to occur for TSCA. The formulation in the Senate bill was created to still allow EPA to involve those persons subject to paying fees.

Please let me know if any additional questions. Thanks,
Sven

Sven-Erik Kaiser
U.S. EPA
Office of Congressional and Intergovernmental Relations
1200 Pennsylvania Ave., NW (1305A)
Washington, DC 20460
202-566-2753

From: Karakitsos, Dimitri (EPW) [mailto:Dimitri_Karakitsos@epw.senate.gov]
Sent: Monday, March 14, 2016 12:04 PM
To: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>
Subject: Fees Question

An issue was raised last week with this paragraph because of its reference to no obligation under FACA. This is something I don't believe has ever been raised by EPA TA. Any thoughts or concerns? I am trying to dig up where we pulled the language from but if you all have any experience with similar language in other statutes that works it would be helpful to know. Makes perfect sense to me that EPA would meet with the people subject to fees to ensure everything works for all parties, having other groups who have nothing to do with the fees is does not seem necessary.

“(E) prior to the establishment or amendment of any fees under paragraph (1), consult and meet with parties potentially subject to the fees or their representatives, subject to the condition that no obligation under the Federal Advisory Committee Act (5 U.S.C. App.) or subchapter III of chapter 5 of title 5, United States Code, is applicable with respect to such meetings;

Dimitri J. Karakitsos

Majority Senior Counsel
Senate Committee on
Environment and Public Works
(202) 224-6176

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 4/9/2016 7:21:32 PM
To: Michal_Freedhoff@markey.senate.gov
Subject: Sen. Markey TSCA TA - Section 26 followup questions

Michal,
Responses to the two section 26 followup questions.

On p 16 lines 17-19, are you saying you need least burdensome too? Because that's the way this is drafted in my view.

Response: Yes. The language that is there would make these actions subject to pre-reform TSCA.

We want to delete "as in effect before such date of enactment" on lines 18/19

Response : ok

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 3/8/2016 4:20:59 PM
To: 'Freedhoff, Michal (Markey)' [Michal_Freedhoff@markey.senate.gov]
Subject: Sen. Markey TSCA TA Request on Section 6 cost considerations

Michal – got it (late catch). Thanks,
Sven

Sven-Erik Kaiser
U.S. EPA
Office of Congressional and Intergovernmental Relations
1200 Pennsylvania Ave., NW (1305A)
Washington, DC 20460
202-566-2753

From: Freedhoff, Michal (Markey) [mailto:Michal_Freedhoff@markey.senate.gov]
Sent: Monday, March 07, 2016 2:22 PM
To: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>
Subject: TA request - Section 6 cost considerations

In the same spirit and on the same timeframe as the others I've sent today, can this redline to what was sent to the House last week AND the version of the language that was sent to the House last week be ranked/added to the table from the 01/05/16 TA?

Thanks
Michal

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 12/14/2016 4:51:47 PM
To: Black, Jonathan (Tom Udall) [Jonathan_Black@tomudall.senate.gov]
Subject: Re: U.S. Sen. Tom Udall - Statement for U.S. EPA Public Meeting on New Chemicals - (12-13-16)

Did you come by?

On Dec 14, 2016, at 11:47 AM, Black, Jonathan (Tom Udall) <Jonathan_Black@tomudall.senate.gov> wrote:

Fyi... delivered a tad earlier.

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From: Black, Jonathan (Tom Udall) <Jonathan_Black@tomudall.senate.gov>
Sent: Tuesday, December 13, 2016 5:10 PM
To: Black, Jonathan (Tom Udall)
Subject: U.S. Sen. Tom Udall - Statement for U.S. EPA Public Meeting on New Chemicals - (12-13-16)

Thank you to EPA and to all of the stakeholders who have convened here today.

Passing TSCA reform legislation earlier this year was a great victory for public health and bipartisan cooperation. It required robust dialogue and collaboration between many different groups with many different priorities.

We could not have done it without constructive dialogue among the affected communities. So everyone's participation is extremely appreciated.

Among the different views and opinions we encountered during our reform effort were strong feelings about the effectiveness of the new chemicals program – the topic of today’s meeting.

My staff is here to listen to the views of all stakeholders and to learn more about how these reforms are impacting you and the public.

But first, I would like to highlight how important these reforms were to myself and other Senators.

Prior to our reforms, I had almost no confidence that new chemicals were getting a robust and serious review by EPA.

While I have great admiration for the staff at EPA and their work, I felt very strongly that the requirements set out for new chemicals in the original TSCA did not do enough to ensure public health and safety.

The reforms we implemented and the principles behind them, therefore, were essential to me. I would not have supported other compromises in the package without them.

My guiding principle was to ensure health and safety were prioritized in new chemical reviews.

That was crystallized in an EPA determination of safety before allowing a chemical onto the market.

One thing that gave me very little confidence in the efficacy of the new chemicals program prior to reform was the process by which a chemical could enter the market without such a determination by EPA.

I can appreciate that there are many in industry who prioritized speed of approval above such determinations.

And I can appreciate that there may be some growing pains now, especially as new chemical reviews and determinations began to take place immediately – one of the areas of the new law to do so.

I want to continue working with affected communities, businesses and the EPA to ensure that these changes are as efficient and sensible as possible.

But I want to ensure that our intent and the plain reading of the law is implemented – a new chemical should not enter the market without a finding based on safety and sufficient information or without restrictions necessary to prevent harm while sufficient information is being developed.

I fully understand that implementing these changes will require everyone to make some adjustments, but I sincerely believe they will be beneficial to all sides in the long-run.

We all have an interest in restoring confidence in the system.

A strong, effective, and working new chemicals program that prioritizes health and safety of the public will lead to the confidence we all need in our reformed law.

<U.S. Sen. Tom Udall - Statement for U.S. EPA Public Meeting on New Chemicals - (12-13-16).docx>

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 4/22/2016 4:07:58 PM
To: 'Freedhoff, Michal (Markey)' [Michal_Freedhoff@markey.senate.gov]
Subject: Sen. Markey TSCA TA on metals

Michal - Got it – checking. Thanks,
Sven

Sven-Erik Kaiser
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Washington, DC 20460
202-566-2753

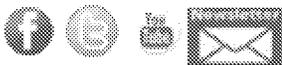
From: Freedhoff, Michal (Markey) [mailto:Michal_Freedhoff@markey.senate.gov]
Sent: Friday, April 22, 2016 11:58 AM
To: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>
Subject: more on metals

This work?

“The Administrator shall prioritize and assess metals and metal compounds in accordance with the U.S. Environmental Protection Agency’s Framework for Metals Assessment (EPA 120/R-07/001) (March 2007), or a successor document developed in consultation with expert scientists in metals risk assessment, following the process used in the development of the 2007 framework.”

Michal Ilana Freedhoff, Ph.D.
Director of Oversight & Investigations
Office of Senator Edward J. Markey
255 Dirksen Senate Office Building
Washington, DC 20510
202-224-2742

Connect with Senator Markey



Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 4/12/2016 12:52:40 AM
To: Freedhoff, Michal (Markey) [Michal_Freedhoff@markey.senate.gov]
Subject: Sen. Markey TSCA TA requests on costs and section 4

Michal, do you need these two tonight , is early tomorrow ok? Thanks,
Sven

On Apr 11, 2016, at 8:37 PM, Freedhoff, Michal (Markey) <Michal_Freedhoff@markey.senate.gov> wrote:

Leg counsel is suggesting this. Problem?

[“(4) RELATIONSHIP TO OTHER LAW.—For purposes of this Act, a rule, order, or consent agreement issued under this subsection shall be treated as a rule, order, or consent agreement issued under subsection (a).”]; [suggested addition to capture applicability of other provisions in TSCA to this new subsection in the same way as the other provisions apply to subsection (a)]]

Michal Ilana Freedhoff, Ph.D.
Director of Oversight & Investigations
Office of Senator Edward J. Markey
255 Dirksen Senate Office Building
Washington, DC 20510
202-224-2742

Connect with Senator Markey
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Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 3/18/2016 7:54:20 PM
To: 'Freedhoff, Michal (Markey)' [Michal_Freedhoff@markey.senate.gov]
Subject: Sen. Markey TSCA TA - Another request on 6(a) rules

Michal – got it. Thanks. Also, did you see the question we asked at the top of the 6(a) options TA? Thanks, Sven

Sven-Erik Kaiser
U.S. EPA
Office of Congressional and Intergovernmental Relations
1200 Pennsylvania Ave., NW (1305A)
Washington, DC 20460
202-566-2753

From: Freedhoff, Michal (Markey) [mailto:Michal_Freedhoff@markey.senate.gov]
Sent: Friday, March 18, 2016 3:49 PM
To: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>
Subject: Another TA request on 6(a) rules

Sven

Thanks for the table of alternatives on cost considerations in rulemaking. There was an interest in discussion today in seeing whether there is a way to flip the presumption of the House language in a way that said:

- epa identify remedies that address the unreasonable risk
- from those remedies, then somehow consider costs, whether by using the word cost-effective or some other word.

Can you help w some options (1 or more, however many occur to you), with eye to putting them into that chart? Ideally, I'd like options that fall closer to the Senate side rankings on both analytic burden and litigation risk but which helps the House feel that EPA will not choose the super-expensive unnecessary remedy.

Thanks
M

Michal Ilana Freedhoff, Ph.D.
Director of Oversight and Investigations
Office of Senator Edward J. Markey (D-MA)

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 4/14/2016 4:08:36 PM
To: Freedhoff, Michal (Markey) [Michal_Freedhoff@markey.senate.gov]
Subject: Re: pls quickly check this text from pbts

Got it

On Apr 14, 2016, at 12:03 PM, Freedhoff, Michal (Markey) <Michal_Freedhoff@markey.senate.gov> wrote:

(4) In selecting among prohibitions and other restrictions promulgated in a rule under subsection (a) pursuant to paragraph (1), the Administrator shall ensure that the chemical substance subject to the rule does not present an unreasonable risk of injury to health or the environment that is identified by the Administrator without consideration of costs and other non-risk factors, including an unreasonable risk of injury to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator, under the conditions of use, and shall reduce exposure to the substance to the extent practicable.

Michal Ilana Freedhoff, Ph.D.
Director of Oversight & Investigations
Office of Senator Edward J. Markey
255 Dirksen Senate Office Building
Washington, DC 20510
202-224-2742

Connect with Senator Markey
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Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 4/16/2016 10:19:14 PM
To: 'Freedhoff, Michal (Markey)' [Michal_Freedhoff@markey.senate.gov]
Subject: Sen. Markey TSCA TA Requests

Michal – how is it going? Hopefully making great progress. We should have something for you shortly on nomenclature and on the section 9, 20, and 21 followups. Any sense of activity tonight and tomorrow? Thanks, Sven

Sven-Erik Kaiser
U.S. EPA
Office of Congressional and Intergovernmental Relations
1200 Pennsylvania Ave., NW (1305A)
Washington, DC 20460
202-566-2753

From: Freedhoff, Michal (Markey) [mailto:Michal_Freedhoff@markey.senate.gov]
Sent: Saturday, April 16, 2016 5:12 PM
To: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>
Subject: Nomenclature

Try this version.

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 4/12/2016 12:46:51 AM
To: Freedhoff, Michal (Markey) [Michal_Freedhoff@markey.senate.gov]
Subject: Sen. Markey TSCA TA looking at costs language

Michal,
Got this one too. Thanks,
Sven

On Apr 11, 2016, at 8:42 PM, Freedhoff, Michal (Markey) <Michal_Freedhoff@markey.senate.gov> wrote:

“the cost-effectiveness of the proposed regulatory action and of the 1 or more primary alternative regulatory actions considered by the Administrator”

What is a “primary alternative regulatory action”? Is this a well-defined or understood term of art? I don’t see it defined anywhere in the bill.

Michal Ilana Freedhoff, Ph.D.
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Office of Senator Edward J. Markey
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Washington, DC 20510
202-224-2742

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Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 3/25/2016 11:58:52 AM
To: Freedhoff, Michal (Markey) [Michal_Freedhoff@markey.senate.gov]
Subject: Re: Specific question on fees language sent yesterday

Michal- got it. Thanks,
Sven

On Mar 25, 2016, at 7:02 AM, Freedhoff, Michal (Markey) <Michal_Freedhoff@markey.senate.gov> wrote:

House included the language we worked thru together that will enable funds to be used for risk management and cbi associated with the substance in question, which obviously addresses a main limitation in the House-passed bill.

How does that intersect with the senate's 25% fee cap - if fees can only be used on the chemical substance for which the fee is assessed, how does that intersect with epa's other tsca activities - like the broader cbi authorities for example? Can both the new House provision and the 25% language co-exist without unintended problems?

Thx
M

Michal Ilana Freedhoff, Ph.D.
Director of Oversight and Investigations
Office of Senator Edward J. Markey (D-MA)

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 4/9/2016 6:58:39 PM
To: Freedhoff, Michal (Markey) [Michal_Freedhoff@markey.senate.gov]
Subject: Re: Section 26

Got it - checking

On Apr 9, 2016, at 2:55 PM, Freedhoff, Michal (Markey) <Michal_Freedhoff@markey.senate.gov> wrote:

On p 16 lines 17-19, are you saying you need least burdensome too? Because that's the way this is drafted in my view.

I wanted to make the rule subject to new section 6 other than the conditions of use issue.

Michal Ilana Freedhoff, Ph.D.
Director of Oversight and Investigations
Office of Senator Edward J. Markey (D-MA)

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 3/7/2016 6:30:02 PM
To: 'Freedhoff, Michal (Markey)' [Michal_Freedhoff@markey.senate.gov]
Subject: Sen. Markey TSCA TA request on implementation dates for bans/phaseouts

Michal – got it. Thanks,
Sven

Sven-Erik Kaiser
U.S. EPA
Office of Congressional and Intergovernmental Relations
1200 Pennsylvania Ave., NW (1305A)
Washington, DC 20460
202-566-2753

From: Freedhoff, Michal (Markey) [mailto:Michal_Freedhoff@markey.senate.gov]
Sent: Monday, March 07, 2016 1:19 PM
To: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>
Subject: TA request - Markey implementation dates for bans/phaseouts

Sven

Again, for after the other pending TA requests, and again, in the spirit of trying to come up with some alternative options in case they are needed. This is an effort to clarify the industry compliance date language but provide an explicit way for EPA to consider long product cycles (like automobiles, for example).

Pls let me know of any workability or other concerns.

Thanks
Michal